

April 10, 2019



Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [Our File #: PRE/20/2019]

On March 13, 2019 the Premier's Office received your request for access to the following records/information:

"January 25, 2019 Information Note: HRS - Tax Treatment of Car Allowances for Elected Officials."

I am pleased to inform you that a decision has been made by the Chief of Staff of the Premier's Office to provide access to some of the information requested. Access to portions of information within record has been refused in accordance with the following exceptions to disclosure, as specified in the *Access to Information and Protection of Privacy Act* (the *Act*):

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister.

30. (1) The head of a public body may refuse to disclose to an applicant information

(a) that is subject to solicitor and client privilege or litigation privilege of a public body.

(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.

34. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of the province of relations between that government and the following or their agencies:

(i) the government of Canada or a province.

You may ask the Information and Privacy Commissioner to review this response, as set out in section 42 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the response and why you are submitting the appeal. The appeal may be addressed to the Information and Privacy Commissioner as follows:

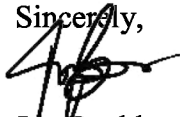
Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*.

This response will be published as outlined on the Completed Access to Information Requests website (<http://atipp-search.gov.nl.ca/>). If you have any further questions, please feel free to contact me by telephone at (709)729-3570 or by e-mail at joybuckle@gov.nl.ca.

Sincerely,



Joy Buckle
ATIPP Coordinator
Enclosures

Access or correction complaint

42.(1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

**Information Note
Human Resource Secretariat**

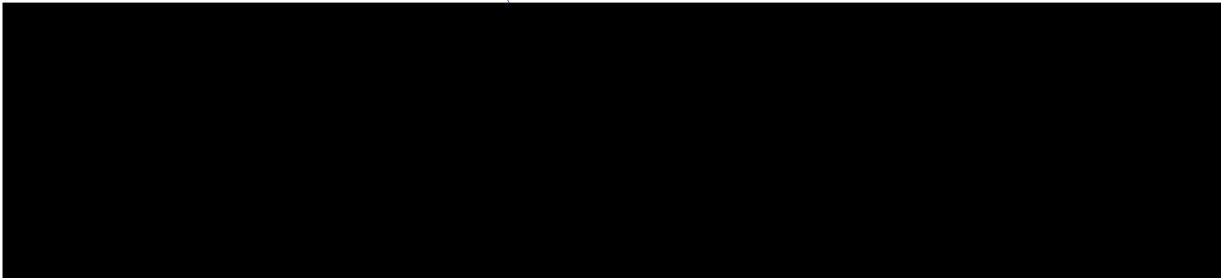
Title: Tax Treatment of Car Allowances for Elected Officials

Background and Current Status:

- There has been a past practice of including Car Allowances in income for elected officials and, in turn issuing a T2200 to offset expenses. It has been determined that this practice is non-compliant with the Income Tax Act (ITA) and Canada Revenue Agency (CRA) regulations.
- Changes introduced in the 2017 Federal Budget will also impact the reporting of allowances effective January 1, 2019 and subsequent years.
- A Declaration of Conditions of Employment (commonly known as a T2200) is a form issued by CRA. The employer completes the form to certify an employee's eligibility to deduct employment related expenses from their income. Allowable employment expenses are defined in the ITA.
- Past practice has been to complete the T2200 to allow Ministers to claim expenses related to their annual car allowance and auto expenses such as fuel, consumable liquids, and related expenses while traveling on government business. (MC1135-90)
- There is no documentation as to why this practice started or when. However, since the 1990's, there has been an 'understanding' that Ministers are considered to hold office and are, thereby entitled to receive a T2200. This assumption is incorrect.
- In May 2017, the House of Assembly Payroll had been asked, by a Member of the House of Assembly (MHA), to provide T2200's to MHA's to allow them to claim expenses against a flat rate car allowance that was introduced to MHA compensation in 2017. The T2200 was not provided in that case.

30(1)(a), 30(1)(b)

Analysis:

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- The T2200 is a Declaration of Conditions of Employment. Elected officials are not employees and the Government of Newfoundland and Labrador (GNL) has a recent ruling from Service Canada (SC) which confirms this.
- Confirmation has been received (2016) from both the CRA Business Inquiry Line and the Canadian Payroll Association Infoline that a T2200 cannot be utilized for elected officials.

- A CRA Memorandum provided to GNL Department of Finance, dated May 5, 2017, also reinforces the position that a T2200 should not be provided to elected officials.
- The first question on the T2200 is “Did this employee’s contract require him or her to pay his or her own expenses while carrying out the duties of employment?”, and in the past, T2200’s completed for Ministers have answered the first question as “Yes”.
- An elected official is not subject to an employment contract and this question should be answered with a “No”.
- A jurisdictional scan has been completed and revealed that no other jurisdiction provides a T2200 to elected officials. [REDACTED]
- [REDACTED] 34(1)(a)(i)
- The car allowances paid to MHA’s and Ministers have been included in income and reported on the T4.
- Section 81(2) of the ITA states:

“Where an elected member of a provincial legislative assembly has, under an Act of the provincial legislature, been paid an allowance in a taxation year for expenses incident to the discharge of the member’s duties in that capacity, the allowance shall not be included in computing the member’s income for the year unless it exceeds ½ of the maximum fixed amount provided by law as payable to the member by way of salary indemnity and other remuneration as a member in respect of attendance at a session of the legislature, in which event there shall be included in computing the member’s income for the year only the amount by which the allowance exceeds ½ of that maximum fixed amount.”
- The 2017 Federal Budget introduced a change to the reporting of non-accountable allowances for work related expenses incurred by members of legislative assemblies. A review by the federal government determined that members of legislative assemblies were receiving a better benefit, due to the non-taxation of allowances, and the federal finance minister made a conscious decision to change the legislation. Effective January 1, 2019 the full amount of non-accountable allowances received by members of legislative assemblies will be included in income for tax purposes as Subsection 81(2) is repealed for the 2019 and subsequent taxation years.

Action to be Taken:

- After a review by the Tax Analysis Division, Department of Finance and the Department of Justice and Public Safety, there is consensus that the current practice is non-compliant as per the ITA and CRA regulations.
- A change in process is required for the 2018 taxation year and a secondary change is required for 2019 and subsequent years.
- For the 2018 taxation year, the tax treatment of car allowances be changed as per Section 81(2) of the ITA to allow GNL to be fully compliant as per the legislation.
 - Any amount paid as a car allowance will not be included in the income of an elected official as per Section 81(2).
 - Removing the car allowance from income will also remove the issue of the request for T2200’s as the amount can no longer be used to claim expenses.

- Effective January 1, 2019, the full amount of non-accountable allowances for work-related expenses will be included in income. There will be no T2200 issued to offset any expenses related to the non-accountable allowances.
- Communication of the above noted measures will be required at the earliest opportunity.
- A tax consultant will be engaged to review previous taxation years and advise of any required retroactivity with respect to amended tax slips and personal income tax returns.

Prepared/Approved by: D. Winsor/T. Follett/R. Simmons
Reviewed by: G. Murphy/J. Cowan, Cabinet Secretariat
Ministerial Approval: Received from Hon. Tom Osborne

January 24, 2019

Cabinet Secretariat Comment:

- HRS requested quotes from Grant Thornton, EY, KPMG and Deloitte for the completion of a detailed review of the completeness and applicability of the taxation memorandum provided by CRA; to potentially make recommendations on next steps; and to potentially assist impacted parties in understanding the tax implications. Quotes are due by February 1, 2019.
- HRS communication staff are developing a draft communications plan, inclusive of draft notification letters and key messages to be concluded on Monday, January 28, 2019.

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29(1)(a)